



## Council

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Kingston, 16–20 July 2018

**Statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session**

### Addendum

## I. Introduction

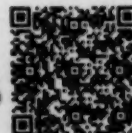
1. The second part of the twenty-fourth session of the Council took place from 16 to 20 July 2018, during which time the Council held 10 meetings.

## II. Report of the Secretary-General on the credentials of members of the Council

2. At the 241st meeting of the Council, on 19 July, the Secretary-General indicated that, as at that date, credentials had been received from 32 members of the Council, as well as 28 members of the Assembly who were not members of the Council but were entitled to participate in its meetings, pursuant to rule 74 of the rules of procedure of the Council.

### III. Elections to fill two vacancies on the Legal and Technical Commission

3. At its 238th meeting, on 16 July, the Council elected Martin Mainero (Argentina) to fill the vacancy on the Legal and Technical Commission left by the resignation of Andrés Sebastián Rojas (Argentina), for the remainder of his term, that is, until 31 December 2021 (see ISBA/24/C/16). At the same meeting, the Council elected Shengxiong Yang (China) to fill the vacancy on the Commission left by the resignation of Jun Wu (China) for the remainder of her term, that is, until 31 December 2021 (see ISBA/24/C/17).



#### **IV. Status of national legislation relating to deep seabed mining and related matters, including a comparative study of existing national legislation**

4. At its 239th meeting, on 17 July, the Council considered a report of the Secretary-General on the status of national legislation relating to deep seabed mining (ISBA/24/C/13). The Council took note of the report, including the ongoing comparative study of existing national legislation conducted with a view to deriving common elements, due for completion by the end of 2018. The Council requested the Secretary-General to submit a report on the status of national legislation relating to deep seabed mining and related matters for consideration by the Council in 2019.

#### **V. Draft regulations on the exploitation of mineral resources in the Area**

5. From 17 to 20 July, the Council continued its consideration of the draft regulations on the exploitation of mineral resources in the Area, in the same informal setting as during part I of the session, in March.

6. The Council based its consideration primarily on the revised draft regulations on the exploitation of mineral resources in the Area prepared by the Commission (ISBA/24/LTC/WP.1/Rev.1), a note by the Commission identifying areas for further work and matters requiring guidance from the Council (ISBA/24/C/20) and a briefing note from the President of the Council dated 15 June.<sup>1</sup>

7. While noting that the draft regulations were still a work in progress, the Council commended the Commission for the considerable work that it had accomplished and encouraged it to pursue its efforts at its meetings in 2019. The Council reiterated its views that regulations on the exploitation of mineral resources should be adopted as a matter of urgency.

8. Members of the Council agreed to submit specific comments on the revised draft regulations by 30 September 2018, in order to provide further guidance to the Commission on the matters identified in its note for incorporation into the next iteration of the draft regulations. The Council requested the secretariat to prepare a compilation of those comments to assist the work of the Commission at its meetings in 2019. The Council decided to resume its consideration of the revised draft regulations during the first part of its 2019 session.

9. On 17 July, the Chair of the Legal and Technical Commission reported to the Council on the outcomes of the first joint meeting of the Commission and the Finance Committee, held in response to a request made by the Council. In her report, the Chair outlined areas of collaboration identified in document ISBA/24/C/10 and the methodology for collaboration. Mention was also made of preliminary discussions on the Legal and Technical Commission acting as the Economic Planning Commission. The Council took note of the oral report and welcomed this timely initiative.

10. The Council provided general comments on the first eight parts of the draft regulations and on areas on which the Commission had requested guidance from the Council. A summary of those comments is contained in annex I to the present report. The Council also referred to the need to learn lessons from the division of the session of the Council into two parts and the time needed to reflect on revisions to the draft regulations made by the Commission immediately before the meetings of the Council.

<sup>1</sup> See [www.isa.org.jm/files/documents/EN/24Sess/BNote.pdf](http://www.isa.org.jm/files/documents/EN/24Sess/BNote.pdf).

11. On 16 July, the Council continued its discussions on a payment mechanism after a presentation by the Director of the Materials Systems Laboratory of the Massachusetts Institute of Technology, Richard Roth, entitled "Update on Financial Payment Systems: Seabed Mining for Polymetallic Nodules". Mr. Roth pointed out that baseline data came from several sources, including historical market data, publicly available price forecasts from mining industry experts and data collected from existing contractors. He explained that, given the mandate of the Authority, the model that he had developed focused on collector costs and not processing costs, and did not yet assess monitoring costs for the Authority. The presentation was followed by a question-and-answer session, during which it was specified that the model included environmental costs, such as monitoring and treating slug water, but not the valuation of potential environmental damage.

12. It was also noted that various economic models, studies and concepts had recently been prepared by members of the Authority. As a way forward to develop the payment mechanism regime, the Council agreed on a proposal made by the delegation of Germany (see annex II)

## **VI. Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-fourth session**

13. At the 241st meeting, the Chair of the Legal and Technical Commission reported to the Council on the work of the Commission during both parts of the twenty-fourth session (see ISBA/24/C/9 and ISBA/24/C/9/Add.1).

14. The Council commended the Commission on the breadth and quality of its work. While recognizing its heavy workload and that priority had been given to the preparation of the draft regulations on the exploitation of mineral resources, the Council urged the Commission to make progress with matters referred to it by the Council. The Council also underscored the importance of the work of the Commission on the annual reports of contractors on their activities in order to identify possible shortcomings, and reaffirmed the importance of advancing environmental objectives.

15. The deliberations of the Council on the work of the Commission during the twenty-fourth session are reflected in Council decision ISBA/24/C/22.

16. In addition, the Council considered an overview of existing measures, means and actions relating to the protection and conservation of the marine environment in areas beyond national jurisdiction, which had been submitted by the delegation of the Netherlands (ISBA/24/C/15). The Council took note of the overview and requested the secretariat to update the information therein on a regular basis.

## **VII. Report and recommendations of the Finance Committee, budget of the International Seabed Authority for the financial period 2019–2020 and scale of assessment for contributions to the budget of the Authority**

17. At its 242nd meeting, on 19 July, and 243rd and 244th meetings, on 20 July, the Council considered the report of the Finance Committee (ISBA/24/A/6–ISBA/24/C/19) and the report of the Secretary-General on the proposed budget of the Authority for the financial period 2019–2020 (ISBA/24/A/5–ISBA/24/C/11 and ISBA/24/A/5/Corr.1–ISBA/24/C/11/Corr.1).

18. The decision of the Council relating to the budget of the Authority for the financial period 2019–2020 is contained in document ISBA/24/C/21.

19. The Council expressed concerns over the status of the voluntary trust fund and stressed the importance of enabling participation from members of the Finance Committee and the Commission from developing countries in meetings of those subsidiary organs to ensure legitimate decision-making. The Council considered the options proposed by the Committee to address as a matter of urgency the shortfall in the voluntary trust fund. In line with the voluntary nature of the fund, the Council decided, as an interim solution and on a voluntary basis, to add an additional contribution to the annual overhead charge invoice to the contractors on an opt-out basis (see ISBA/24/C/21, para. 9).

20. The Council expressed its appreciation to the Governments of Argentina, China, Norway and the United Kingdom of Great Britain and Northern Ireland for their generous contributions to the voluntary trust fund.

### **VIII. Election of members of the Legal and Technical Commission**

21. At its 243rd meeting, the Council took note of the information contained in report of the Secretary-General on the election of members of the Commission (ISBA/24/C/14). The question of the election will be included in the agenda of the Council in 2019 in view of the forthcoming election of members of the Commission in 2020. The importance of environmental expertise in the Commission was stressed.

### **IX. Dates of the next session**

22. The first part of the twenty-fifth session of the Council will take place from 25 February to 1 March 2019.

### **X. Other matters**

23. At its 243rd meeting, the Council considered a report of the Secretary-General on considerations relating to a proposal by the Government of Poland for a possible joint-venture operation with the Enterprise (ISBA/24/C/12). The Secretary-General also provided the Council with a progress update on the study on the operationalization of the Enterprise, which is expected to be presented for consideration at the twenty-fifth session of the Council. A statement was made by the delegation of Poland. The Council took note of the report and noted that a full proposal for a joint-venture operation with the Enterprise was also expected to feature on the agenda of the Council in 2019, requesting the Secretary-General to make any necessary arrangements in that regard.

24. At its 244th meeting, the Council took note of the suggestions for facilitating the work of the Authority submitted by the delegation of Germany (ISBA/24/C/18), which included the circulation of annotated agendas before meetings of the Council and the Assembly and the timely notification of forthcoming workshops and related meetings and timely publication of outcome reports.

25. The President of the Council closed the session on 20 July.

## Annex I

### Comments on the structure and flow of the revised draft regulations on the exploitation of mineral resources in the Area

#### I. General comments on the revised draft regulations

1. Overall, the Council was satisfied with the improvements made by the Commission to the revised draft regulations on the exploitation of mineral resources in the Area (ISBA/24/LTC/WP.1/Rev.1) with respect to the general structure and flow, and it requested the Commission to continue to improve it, including by updating the table of contents as the text evolved and reviewing the transition between exploration and exploitation, as well as adverse impacts on the economies of developing countries resulting from deep seabed mining. The Council also noted the greater emphasis put on the role of sponsoring States and flag States. The Council requested further clarification on the consultations being held, the evaluation process and responsibilities, and invited the secretariat to prepare a matrix in that regard.

#### II. General comments on parts I to VIII of the revised draft regulations and other matters on which the Commission had requested guidance from the Council

##### Part I

2. The Commission is invited to:

- (a) Add a principle referring to the balance between resource exploitation and the protection of the marine environment;
- (b) Elaborate on freedom of the high seas and the due regard clause;
- (c) Further review the definition of serious harm, maintain in the regulations the distinction between "conserving" and "preserving" made in the United Nations Convention on the Law of the Sea (see draft regulation 2, para. 5 (a)) and clarify the provision on compliance notices (see draft regulation 4, para. 3);
- (d) Review the reference to "if any" in association with regional environmental management plans in draft regulation 2, paragraph 5;
- (e) Consider including consultations with nearby coastal States in the application process in the context of article 142 of the Convention (see draft regulation 4);
- (f) Review the issue of compliance notices by the Secretary-General in draft regulation 4, paragraph 3;
- (g) Review the issues of multiple sponsorship and effective control (see draft regulation 6);
- (h) Develop, in parallel with the regulations, a list of priorities for the development of standards and guidelines (such as those in draft regulation 7, para. 3), which may need to be sequential, and of standards for mining discharges.

##### Part II

3. The Commission is invited to:

- (a) Examine the use of the disclaimer "where applicable" in draft regulation 13, paragraph 3 (a);
- (b) Consider the need to take account of regional environmental management plans in draft regulation 14;

- (c) Elaborate provisions on monopolization (see draft regulations 16 and 24);
- (d) Review time frames during the application process and the duration of the contract;
- (e) Consider transparency issues throughout the application process;
- (f) Consider elaborating on options for refusing an application;
- (g) Clarify objectives, standards, thresholds and the relationship among best environmental practices, best available scientific evidence, best available techniques and good industry practices.

### Part III

#### 4. The Commission is invited to:

- (a) Elaborate on adaptive management with criteria and procedures, taking into account the principle of mutual consent to contract amendments and the need for security of tenure, and review the payment of applicable fees (see draft regulation 19);
- (b) Consider replacing the word "optimize" with "ensure", "manage" or "achieve" in draft regulation 29, paragraph 1;
- (c) Consider replacing the word "optimal" with "sound" in draft regulation 31 and review the intent and purpose of the reference to "inefficient mining practices" in draft regulation 31, paragraph 1 (a);
- (d) Review draft regulation 31, paragraph 4, in the context of the jurisdiction of the Authority;
- (e) Make applicable international rules and standards function as the minimum standards to avoid the risk of less stringent national laws remaining applicable (see draft regulation 32, para. 3 (a));
- (f) elaborate on the environmental performance guarantee through a transparent process and binding guidelines and clarify the language in section 9.

### Part IV

#### 5. Improvements are welcome and the Commission is invited to continue to elaborate on this part. The Commission is invited in particular to:

- (a) Include references to the ecosystem principle and the polluter pays principle;
- (b) Strengthen provisions relating to environmental protection, monitoring, evaluation and the closure plan to provide a robust environmental framework in the body of the text rather than in annexes, with inputs from all stakeholders;
- (c) Consider making regional environmental management plans mandatory and include those plans in the overarching environmental policy and framework of the Authority and the environmental obligations of the contractors, and consider taking into account broader regulatory frameworks in the development of regional environmental management plans;
- (d) Factor regional environmental management plans into environmental reports, such as environmental impact assessments, environmental impact statements and environmental management and monitoring plans, and into applications;
- (e) Consider sociocultural impacts in the environmental impact assessment and in the review by the Authority of environmental impact assessments by contractors;

(f) Clarify the language in draft regulations 47 (disclaimer and references to articles 209 and 215 of the Convention) and 50;

(g) Give further consideration to the purposes of funding the environmental liability trust fund and their impact on the nature of the fund;

(h) Consider giving access to the liability environmental trust fund to coastal States affected by the potential transboundary impacts of mining;

(i) Clarify compensation mechanisms for environmental damage.

#### **Part V**

6. The Commission is invited to:

(a) Consider that modifications to environmental plans could be permitted by the Secretary-General if those modifications do not constitute a material change (see draft regulation 55);

(b) Review the period and include an independent scientific assessment, as well as a list of triggers, and consider a mechanism for reporting to the Commission, the Council and the Secretary-General (see draft regulation 56).

#### **Part VI**

7. The Commission is invited to further elaborate on the objective, assessment and review of closure plans and on their costs and effects (see draft regulation 58) and to consider making them public.

#### **Part VII**

8. The Commission is invited to:

(a) Further develop the financial payment regime, considering the written report that the Massachusetts Institute of Technology will deliver ahead of the meetings of the Council and the Commission in 2019. Several views were expressed, some delegations preferring the royalty option, while others favoured the profit-sharing option, or a combination thereof;

(b) Continue its work on the financial and payment mechanism and elaborate on incentives to contractors, including in relation to benefit-sharing and environmental objectives (see draft regulation 61);

(c) Elaborate on unpaid royalty and the issue of compliance notices (see draft regulation 77).

#### **Part VIII**

9. The Commission is invited to:

(a) Further examine the purpose, rationale (cost or service) and function of the fee and consider whether it may be set off against royalty;

(b) Ensure a clear and consistent reference to the exchange rate to be used throughout the regulations, for fees as well as royalties.

#### **Part IX**

10. With respect to the confidentiality of information, the Council expressed its satisfaction with the approach followed in the revised draft regulations, which balanced access by the public to environmental data and the protection of confidentiality of industry and business aspects.

11. A suggestion was made to remove draft regulation 87, paragraph 2, to ensure a level playing field and to clarify the use for which information was needed. Another suggestion was made to provide more weight to the independent assessment of performance reports.

**Part X**

12. With respect to inspection and enforcement mechanisms, the Commission is invited to:

(a) Continue its consideration of those important questions and explore appropriate remote monitoring technology and the administrative and operative costs that it entails (see draft regulation 100);

(b) Review draft regulation 101 in the light of the responsibilities of sponsoring States.

**Annex II****Proposal by the delegation of Germany**

1. To keep the momentum on the development of a financial model, the German delegation proposes to organize efforts in a systematic manner.
2. First, the Council should ask Mr. Roth of the Massachusetts Institute of Technology to compare and synthesize the reports and studies listed below and, on that basis, to prepare a document in which he would describe the pros and cons of the different payment models, namely, the ad valorem model, the profit-based model and a combination of both:
  - The submission by the African Group on 9 July 2018 relating to the payment regime and other financial matters
  - The economic model of the China Ocean Mineral Resources Research and Development Association, presented on 17 July 2018 during a side event
  - The economic study by Germany on the economic benefits of commercial deep sea mining operations, of 30 September 2016
  - The economic model developed by the Massachusetts Institute of Technology, as presented to the Council in its revised version on 16 July 2018
3. The German delegation would like to highlight that, in conducting such a comparative analysis and synthesis, the Institute should also take due account of the potentially diverse assumptions upon which those reports and calculations have been based.
4. Second, the Massachusetts Institute of Technology should make the results of its work public and initiate a public consultation through the website of the International Seabed Authority, inviting comments from member States, observers and all interested stakeholders. The Institute should also be asked to take due account of the comments received and compile them into its report. The consolidated document should be submitted to the Authority no later than 31 December 2018, to give member States and observers sufficient time to review the report well before the twenty-fifth session of the Council.
5. Third, the German delegation would like to ask the Council to establish an open-ended working group on the present matter. Participation in the working group should be open to all members of the Assembly, the Council, the Legal and Technical Commission and the Finance Committee, as well as to contractors and observers. The working group should be mandated to meet before the twenty-fifth session of the Council to discuss the report prepared by the Massachusetts Institute of Technology. The working group would report to the Council on the result of those discussions at the twenty-fifth session.
6. It is well known that developing a financial model is of utmost importance for the continuation of the Authority's work, as well as to give the fullest effect to the principle of the common heritage of mankind. Against this background, the delegation of Germany considers the present proposal to be both a necessary and sensible way forward.